

MEMORANDUM

DATE: December 23, 2002

TO: Robert Shadowens
Deputy Inspector General for Investigations and Operations

FROM: Vincent A. Mulloy
Counsel to the Inspector General

SUBJECT: When Education Awards are an Obligation against the National Service Trust

I. Introduction

You requested my opinion as to when an AmeriCorps member's education award should be construed as an obligation to be charged against the appropriation for the National Service Trust. In my view, an obligation on the Trust's appropriation occurs when an AmeriCorps member signs a Member Contract to participate in AmeriCorps.¹

II. Discussion

The National Service Trust was established by section 145 of the National Community Service Act of 1993, P.L. 103-82, 42 U.S.C. § 12601. Payments from the Trust for education awards are authorized by 42 U.S.C. § 12601(c), which states that "[a]mounts in the Trust shall be available, to the extent provided for in advance by appropriation, for payments of national service educational awards in accordance with section 12604 of this title."

Since Fiscal Year 1994, Congress has generally provided funding for education award payments from the Trust, without fiscal year limitation, but has specifically earmarked the maximum amount of funds that can be used for education awards from the Corporation's general lump-sum appropriation. See e.g., Departments of Veterans Affairs and Housing and Urban Development,

¹ In an opinion dated December 17, 2002, the Corporation's Office of General Counsel stated that an obligation arises no earlier than when an AmeriCorps member enrolls in the National Service Trust. In view of the fact that enrollment occurs within the same general time frame as when the AmeriCorps member signs the Member Contract, and concerns the same fiscal year accounts, the point of enrollment can serve as an equivalent basis in which to determine whether sufficient available funds exist in the National Service Trust.

and Independent Agencies Appropriations Acts, 1994, P.L. 103-124, 107 Stat. 1302 (“not more than \$94,500,000 to remain available without fiscal year limitation, shall be transferred to the National Service Trust Fund for educational awards as authorized under subtitle D of title I of the Act.”)

The General Accounting Office has never given a precise and all-inclusive definition of what constitutes an “obligation” under Federal appropriation law, only going so far as to state that “an obligatory generally has been considered to be a definite commitment which creates a legal liability of the Government for the payment of appropriated funds for goods and services ordered or received.” United States General Accounting Office, Office of General Counsel, Principles of Federal Appropriations Law, Vol. II, 7-3 (2nd ed. 1992) (quoting Comptroller General Opinion Letter B-116795) (hereafter, GAO Redbook)

In addition, a Federal statute, 31 U.S.C. § 1501, specifically defines nine types of transactions that should be recorded and reported as a legal obligation against an appropriation fund balance of the Federal government. GAO has stated that “in one sense, these nine criteria [of subsection 1501(a)] taken together may be said to comprise the ‘definition’ of an obligation.” GAO Redbook, Vol. II, 7-6.

A “binding agreement between an agency and another person” is listed as one of the nine. Minimum requirements for a “binding agreement” to be recorded are:

[D]ocumentary evidence of a (1) a binding agreement between an agency and another person (including an agency) that is (A) in writing, in a way and form, and for a purpose authorized by law; and (B) executed before the end of the period of availability for obligation of the appropriation or fund used for specific goods to be delivered, real property to be bought or leased, or work or service to be provided.

31 U.S.C. § 1501(a)(1). An additional transaction to be recorded and reported as an obligation under this subsection is “documentary evidence of . . . other legal liability of the Government against an available appropriation or fund.” 31 U.S.C. § 1501(a)(9).

In the context of the National Service Trust, it appears that the Member Contract signed by the AmeriCorps participant and the AmeriCorps program director, acting on behalf of the Corporation, at the beginning of the AmeriCorps member’s term of service contains all the elements of the definition of a “binding agreement” under subsection 1501(a)(1). Alternatively, the Member Contract appears to create a “legal liability of the Government” under subsection 1501(a)(9). The Member Contract could also be construed as a “definite commitment” under GAO standards as well. For these reasons, the execution of the Member Contract should be construed as an obligation to be charged against current fiscal year appropriations.

With respect to the elements of subsection 1501(a)(1), the Member Contract is, of course, “in writing.” It also appears to be a “binding agreement” in that it manifests all elements that would establish a legal agreement, such as offer, acceptance, and consideration, and is signed both the AmeriCorps member and the AmeriCorps program director. It may be argued that the possibility

that the AmeriCorps member may drop out of the program renders the agreement indefinite, and thus a “contingent liability” rather than an obligation. However, for the purposes of determining when an obligation occurs under Federal appropriation law, the Comptroller General has indicated that the mere potential for performance by a party is sufficient for an obligation to exist:

The question whether Government funds are obligated at any specific time is answerable only in terms of an analyses of written arrangements and conditions agreed to by the United States and the party with whom it is dealing. If such analyses discloses a legal duty on the part of the United States **or which could mature into a legal liability by virtue of actions on the part of the other party beyond the control of the United States, an obligation of funds may generally be stated to exist.**

42 Comp. Gen. 733, 734 (1963) (emphasis added).

Member Contracts are “for a purpose authorized by law” by virtue of Section 139 of the NCSA, 42 U.S.C. § 12593 which states that “[a]n individual performing full-time national service in an approved national service position **shall agree** to participate in the program sponsoring the position for not less than 1,700 hours during a period of not less than 9 months and not more than 1 year.” (emphasis added). As a condition of the grant award, Grantees are required by the Corporation to create a contract with the AmeriCorps member. Grant Provision Number 7, states that “[t]he Grantee must require that members sign contracts that, at minimum, stipulate . . . [t]he minimum number of service hours . . . necessary to complete the term of service and to be eligible for the education award.” The Corporation’s Program Director’s Handbook states that “[b]efore members begin their service, they must sign a member contract that is specific to their program.” Corporation for National and Community Service, Program Director’s Handbook 2002-2003, 63 (May 2002) (hereafter Handbook) See also Handbook 2001, at 95 (Jan. 2001). The Handbook also requires that “[a] copy of each member’s signed contract must be kept in the member’s file and recorded on the Member Information Profile in WBRs.” Handbook 2002-2003, 77; See also, Handbook 2001, 45.

A review of the Corporation’s sample Member Contract contained in the Program Director’s Handbook reveals that the Corporation bargains for a “specific . . . service to be provided.” The Member Contract specifies that AmeriCorps member will perform a set number of hours at a defined task within a set period of time. In exchange for the service, the Paragraph V. B. of the Member Contract commits the government to pay an education award from the National Service Trust:

Upon successful completion of the member’s term of service, the member will receive an education award from the National Service Trust. For successful completion of a full-time term, the member will receive an education award in the amount of \$4,725. For successful completion of a part-time term, the member will receive an education award of [up to \$2,362.50].

Handbook 2002-2003, 80 (editorial brackets in the original). See also, Handbook 2001, 120.

Because funds for education awards from the National Service Trust are appropriated by Congress “without fiscal year limitation,” the Member Contract is easily construed as one that will be “executed before the end of the period of availability for obligation of the appropriation or fund” under subsection 1501(a)(1)(b).

GAO has stated that if an amount in question falls within the meaning of subsection (a) of 31 U.S.C. § 1501, then an agency is under a duty to record the obligation:

If a given transaction does not meet any of the criteria [of Subsection 1501(a)], then it is not a proper obligation and may not be recorded as one. **Once one of the criteria is met, however, the agency not only may but must at that point record the transaction as an obligation.** While 31 U.S.C. § 1501 does not explicitly state that obligations must be recorded as they arise or are incurred, it follows logically from an agency’s responsibility to comply with the Antideficiency Act. GAO has made the point in reports and decisions in various contexts. (citations omitted)

GAO Redbook, Vol. II, 7-6

III. Conclusion

In light of the foregoing, a Member Contract should be construed as an obligation when the contract is executed, and the education award amount stated as a clause within the Member Contract should be recorded as obligation and charged against the appropriation of that fiscal year in which the contract was signed.